

**Consideration of preliminary adoption of amendments to 312 IAC 3-1-2.5 which identifies provisions of the Code of Judicial Conduct which are applicable to the Commission's administrative law judges; Administrative Cause No. 09-121J**

In November 2006, the Natural Resources Commission gave final adoption to 312 IAC 3-1-2.5 which identifies provisions of the Indiana Supreme Court's Code of Judicial Conduct which are applicable to its administrative law judges and professionals within the Division of Hearings. The rules were implemented in concert with the Office of Environmental Adjudication (which performs a similar adjudicatory role pertaining to the Indiana Department of Environmental Management), and, as to the Division of Hearings, were to help implement IC 14-10-2-2 which states an administrative law judge is subject to the "applicable provisions of the code of judicial conduct". For the most part, 312 IAC 3-1-2.5 affirmed the Code of Judicial Conduct, but some provisions were exempted as being inapplicable. These included provisions pertaining to running for judicial office, prohibitions on broadcast media coverage, and restrictions on appointment to government positions. The new rule was approved by the Attorney General and Governor and became effective on February 25, 2007.

In late 2008, the Indiana Supreme Court revised the Code of Judicial Conduct. The revisions had subtle and mostly minor consequences for the exemptions established in 2007 by 312 IAC 3-1-2.5, but the enumeration of the Canons set forth in the Code of Judicial Conduct were reordered. An additional aspect of the proposal is that an administrative law judge would be authorized to perform mediations governed by AOPA in the ordinary course of employment, and, without a fee, mediations governed by the courts. The recommendation is that amendments proposed in the attachment be given preliminary adoption. The Division of Hearings again intends to pursue the amendments in concert with the Office of Environmental Adjudication, including joint communications to the Indiana State Bar Association.

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule  
LSA Document #10-

DIGEST

Amends 312 IAC 3-1-2.5, which identifies provisions of the code of judicial conduct which are applicable to administrative law judges, to accommodate amendments received by the Indiana Supreme Court through October 15, 2008. Effective 30 days after filing with the Publisher.

**312 IAC 3-1-2.5 Applicable provisions of the code of judicial conduct to administrative law judges**

Authority: IC 14-10-2-4

Affected: IC 4-21.5; IC 14-10-2-2

Sec. 2.5. (a) The following definitions apply throughout this section:

(1) “Administrative law judge” means an administrative law judge for the natural resources commission.

(2) “Code of judicial conduct” refers to the code of judicial conduct adopted by the Indiana supreme court, effective ~~January 1, 1999 (including amendments passed through January 1, 2006)~~ **March 1, 1993 (including amendments received through October 15, 2008).**

(b) This section is intended to assist with the implementation of IC 14-10-2-2(a)(2)(C), which requires administrative law judges to comply with the applicable provisions of the code of judicial conduct.

(c) For purposes of this section, wherever in the code of judicial conduct the term:

(1) “court personnel” or a term of similar application is used, the term applies to an employee of the commission’s division of hearings, other than an administrative law judge; and

(2) “judge” is used, the term applies to an administrative law judge.

(d) Unless otherwise specified in subsection (e), the provisions of the code of judicial conduct are applicable to an administrative law judge. These provisions shall be liberally construed to implement the intention of IC 14-10-2-2.

(e) The following provisions of the code of judicial conduct are inapplicable to an administrative law judge:

(1) Canon ~~3B(14)~~ **2.8(C)** and ~~3B(13)~~ **2.17**.

(2) Canon ~~4C~~ **3.2 and 3.4**.

(3) **Canon 3.9 if mediation services are provided in the ordinary course of commission employment or on a pro bono publico basis.**

(4) Canon ~~4G~~ **3.10**, to the extent that the practice of law in a representational capacity on a pro bono publico basis pursuant to the Indiana Rules of Professional Conduct, Rule 6.1 is prohibited. Such practice of law shall, however, be conducted subject to all applicable requirements of the code of judicial conduct.

~~(4)-(5)~~ Canon ~~4H(2)~~ **3.15(B) and 3.15(C)**.

~~(5)~~ **(6)** Canon ~~5A(3), 5A(4), 5B(1), 5C, 5D, and 5F~~ **4**.

*(Natural Resources Commission; 312 IAC 3-1-2.5; filed Jan 26, 2007, 10:48 a.m.: 20070214-IR-312060107FRA; readopted filed Jul 21, 2008, 12:16 p.m.: 20080813-IR-312080052RFA)*